



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Development Agreement Proposal for Minton Property,
400 South Beckman Road

MEETING DATE: August 16 & 17, 1994

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration and possible approval of
attached improvement agreement.

BACKGROUND INFORMATION: Pursuant to the direction of the City Council, staff has been negotiating with R. E. Service Corporation of Sunnyvale for an Improvement Agreement on the old Minton Door Company property. Specifically, the proposal centers on the City advancing costs of offsite improvements (curbs, gutters, sidewalks, street lights, etc.) in exchange for guarantees from R. E. Service Company, Inc. of certain employment levels. This is a fairly traditional form of economic development.

The attached agreement (which has been the subject of negotiations over the past few weeks between the City and R. E. Service Company, Inc.) reflects a "baseline" employment figure of 80 positions, equalling an annual payroll of \$1.3 million. If R. E. Service Company, Inc. maintains that employment level for five years, the costs advanced by the City for the offsite improvements would be forgiven at a rate of 20% per year for each of the five years.

Although the City originally wanted guarantees of 160 employees (average) for 5 years, RES has strongly maintained its position that 80 employees should justify forgiveness of costs. The appropriateness of these figures is a question for the Council, but the agreement has been drafted showing RES' proposed number.

RES has also proposed that if its payroll equals 160 full time jobs for any single year during the agreement period, all remaining sums would be forgiven. Conversely, if employment is less than the baseline proposed, the draft agreement provides RES would be liable for improvement costs on a pro rata basis. A representative of RES will be present to address further questions.

FUNDING: To be determined.

Respectfully submitted,

Bob McNatt
City Attorney

BM:pn

CCRESERV.INC/TXTA.01V

APPROVED: _____

THOMAS A. PETERSON
City Manager



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City of Lodi - Industrial Project Cost/Benefit Analysis

Exhibit B

Summary of Fiscal Analysis for:

Minton Property Reuse
400 S. Beckman Road

Total employment*: 80

incl. 26 new City resident employees

Total Payroll*: \$1,480,000

Total Cost of Requested City Participation: \$275,250

(excludes \$93,000 for north side of Thurman St. already committed by City)

Annual Direct Tax Revenue to City*: \$18,124

breakdown:

\$9,000	Electric Revenue contribution to General Fund
\$2,453	Sales Taxes from employees
\$2,988	Property Taxes from development
\$2,892	Property Taxes from employees
\$312	Wastewater Revenue contribution to General Fund
\$200	Sales Taxes from operations
\$182	Water Revenue contribution to General Fund
\$97	Business License Tax
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\$18,124	Total

Payback time based on direct tax revenue: 15 years

Total annual revenue for 5 year payback: \$57,040 or 3.1 times direct revenue**

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- * figures based on buildout expected to occur in approximately 2 to 3 years
 - ** payback time allows for reduced revenue in early years of project.

Summary of Fiscal Analysis for:

Minton Property Reuse
400 S. Beckman Road

Total employment*:	160	incl. 26 new City resident employees
Total Payroll*:	\$2,780,000	
Total Cost of Requested City Participation:	\$275,250	(excludes \$93,000 for north side of Thurman St. already committed by City)
Annual Direct Tax Revenue to City*:	\$29,516	breakdown:
		\$18,000 Electric Revenue contribution to General Fund
		\$4,110 Sales Taxes from employees
		\$2,988 Property Taxes from development
		\$2,892 Property Taxes from employees
		\$624 Wastewater Revenue contribution to General Fund
		\$400 Sales Taxes from operations
		\$365 Water Revenue contribution to General Fund
		<u>\$137</u> Business License Tax
		\$29,516 Total
Payback time based on direct tax revenue:	9 years	
Total annual revenue for 5 year payback**:	\$64,065 or	2.2 times direct revenue

* figures based on buildout expected to occur in approximately 2 to 3 years

** payback time allows for reduced revenue in early years of project.

When Recorded Return to:

City Clerk
City Hall
Lodi, CA 95240

IMPROVEMENT AGREEMENT

400 South Beckman Road
Assessor's Parcel 049-070-58

THIS AGREEMENT is made and entered into by and between R.E. SERVICE COMPANY, INC., hereinafter called "Buyer" and the CITY OF LODI, a municipal corporation, hereinafter called "City."

WHEREAS, for commercial/industrial purposes, whereon Buyer intends to operate its business, and Buyer is presently in the process of purchasing or acquiring that certain real property located in the City of Lodi, County of San Joaquin, California and described as follows:

400 South Beckman Road, Lodi, California 95240
and more particularly described as follows:

All that real property situated in the City of Lodi,
County of San Joaquin, State of California, described
as follows:

A parcel of land being a portion of the Northwest One
Quarter of Section 7, Township North, Range 7 East,
Mount Diablo Base and Meridian, more particularly
described as follows:

The 19.91 acre parcel as shown on that record of
Survey filed for record on September 25, 1987, in Book
29 of Surveys at Page 140, San Joaquin County Records.

For the purposes of this agreement, the portion of the
above described property fronting the planned Thurman Street is
divided into two parcels as follows:

Parcel A consists of the developed Northwest portion of the
property as shown on the building site plans on file at the City
Building Department.

Parcel B consists of the entire remaining portion of the
property other than Parcel A.

WHEREAS, City ordinances and policies, including but not
limited to Chapter 15.44 of the Lodi Municipal Code establish

certain requirements for offsite improvements associated with the use of said premises; and

WHEREAS, City, for the purposes of encouraging local economic development, generating additional tax revenues and increasing employment opportunities for residents of Lodi, is amenable to assisting Buyer by financially participating in the payment of fees and construction of certain publicly owned offsite infrastructure and facilities necessary to serve such uses; and

WHEREAS, it is the intent and purpose of this agreement to:

1. Provide a methodology and criteria for Buyer to be forgiven costs of fees and constructing such offsite improvements, which costs will be advanced by the City;
2. Set forth certain other rights, duties and obligations of the parties;

NOW, THEREFORE, BE IT AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. This agreement and all of the terms, conditions, rights and duties thereunder shall become valid and enforceable if and only if Buyer shall purchase and close escrow on the subject property, referred to above, taking title on or before September 30, 1994. Should Buyer fail or refuse to complete the purchase transaction by said date, this agreement shall be null and void and the Improvement Deferral Agreement dated November 12, 1986 (San Joaquin County Recorder's Instrument No. 86104275) shall remain in full force and effect.
2. Upon close of escrow on the subject property by Buyer on or before September 30, 1994, the above referenced Improvement Deferral Agreement dated November 12, 1986 shall become null and void and the City shall waive all duties imposed on the property owner at 400 South Beckman road arising under San Joaquin County Recorder's Instrument NO. 86104275.
3. A notarized copy of this agreement shall be provided to Buyer's escrow company, Chicago Title Company, 4612 McGaw Street, Stockton, California with instructions from the Buyer that this instrument is to be recorded in the deed for the subject property.
4. City shall commence construction of the paragraph 7 improvements as soon as reasonably possible after the close of Buyer's escrow and the City will use its best efforts to complete construction of the improvements described below in Paragraph 7 as soon as possible, but in any event such improvements shall be

completed on or before February 28, 1995, subject only to delay for circumstances beyond City's control including but not limited to weather, fire, or natural disaster.

5. Buyer agrees to repay City the costs of the improvements described in Paragraph 7 on the Due Date, subject to the forgiveness provisions below. However, Buyer's actual liability for such improvement costs shall not exceed one-hundred fifteen percent (115%) (including engineering fees) of the estimated cost of each item set forth in Paragraph 7. Buyer's obligation is not personal to Buyer but is a lien on the land.

6. City agrees that the indebtedness evidenced by this agreement in Paragraph 7 below shall be forgiven, on a pro rata basis of twenty percent (20%) per year, if Buyer gives to City satisfactory evidence of certain performance criteria as follows:

A. Forgiveness is premised on yearly payroll for Buyer's employees. The baseline assumption for calculating forgiveness is the equivalent payroll for eighty (80) full time positions (15 salaried and 65 hourly positions) representing an annual payroll of \$1,300,000.00. If in any of the twelve month increments referred to in this agreement, Buyer's payroll amounts to \$1.3 million, twenty percent (20%) of the total repayment due shall be forgiven, representing one-fifth of Buyer's total obligations hereunder.

B. Employment levels translating to payroll over or under the baseline for any twelve month increment shall be pro rated and carried forward. For example, if total improvement costs to be forgiven under this agreement are \$500,000.00 ($\$500,000 \times 20\% = \$100,000.00$ per year for five years) and the first year's employment level was equivalent to forty positions or a payroll of \$650,000.00, buyer's first year forgiveness would be \$50,000.00 ($\$650,000 / \$1,300,000 = 50\%$ of that year's increment). If for all remaining years, payroll equaled eighty positions for each of the years, at the end of the five year period, April 1, 2000, the Buyer would owe City \$50,000.00 cash, payable on or before May 1, 2000, the Due Date.

Conversely, if during the first year payroll equaled 100 positions (or 125% of baseline assumptions, amounting to \$1.625 million in payroll) Buyer's first year forgiveness would be \$125,000.00 ($125\% \times \$100,000$). If Buyer's

employment/payroll levels remained constant over the succeeding years, Buyer's obligation would be extinguished in four (4) years, (4 X \$125,000 = \$500,000).

- C. To provide incentive for increased employment, if at any time Buyer's regular payroll for any twelve month increment (excluding bonuses or one time payments to employees or officers) equals 160 full time positions (or \$2,600,000.00 annual payroll) all further obligations hereunder shall cease and all remaining amounts owed shall be forgiven.
 - D. The first twelve month increment for calculating forgiveness hereunder shall commence on April 1, 1995. Proof of payroll/employee equivalence shall be provided to City by Buyer not later than May 1 of each year for the previous twelve month increment. If not provided by May 1st of each year, City shall notify Buyer in writing of such failure. Should Buyer fail or refuse to provide such information within seven (7) calendar days after notice, City may declare Buyer in material breach and deny forgiveness of all sums for that year's increment.
 - E. Buyer agrees that in order to authenticate such employment or payroll, City shall be given reasonable access to Buyer's records. Such inspection authorization shall not be deemed a waiver of privacy rights of any individual employee and shall be for the sole purpose of confirming employment or payroll figures.
 - F. Buyer shall not be relieved of duties hereunder by reason of any strike, work stoppage, nor by layoffs, closure or cutback not occasioned by flood, fire or other widespread catastrophe or act of God.
 - G. Should Buyer sell, transfer or dispose of property referred to as Parcel B, described above, no allowance shall be made in calculating employment/payroll figures for determining forgiveness for any employee or payroll associated with other enterprises not owned by Buyer which are conducted on Parcel B.
7. The public improvements and financial participation by City consists of the following:
- A. Parcel A improvements consist of the south side of Thurman Street improvements and utilities included in the agreement between the City of

Lodi and the Minton Company (San Joaquin County Recorder's Instrument No. 86104275). These improvements consist of grading and paving, curb, gutter and sidewalk, catch basins and laterals, streetlights, and extensions of water, wastewater and storm drains in the street. The estimated cost of these improvements including ten percent (10%) for engineering is \$114,000.000.

- B. Parcel B improvements consist of the same items as for Parcel A plus water, wastewater and storm drain services for Parcel B. The street will be extended in accordance with the specific plan for Thurman Street as approved by the Lodi City Council to accommodate development of Parcel B and adjacent properties. In the event the City Council approves termination of the street with a cul-de-sac, Buyer agrees to dedicate additional right-of-way for said cul-de-sac in accordance with applicable standards for truck turn-arounds. The estimated cost of these improvements, including ten percent (10%) for engineering is \$103,000.00.
- C. Completion of the North side of Thurman Street is the responsibility of the City and will be done in conjunction with the Parcel A and B improvements at an estimated cost of \$93,000.00. Buyer shall have no responsibility for any costs of improving the North side of Thurman Street.
- D. The Sewer Connection Fees for business(es) located on Parcels A & B totaling 160 full time employees (determined by equivalent payroll as provided above) plus estimated industrial discharge will be a maximum additional credit of \$58,250 over and above the existing credit of \$21,304.85 for fees already paid by the current owner. This actual sewer connection fee over the existing credit, if any, will be added to the total Parcel A and Parcel B improvements in determining the amount subject to forgiveness over five years. If the Parcel A & B actual costs are as estimated, then this total will be \$114,000 + \$103,000 plus however much the Sewer Connection fees as determined below are due, if any, in excess of the current \$21,305 credit up to the maximum additional credit of \$58,250 based on a 160 person equivalent payroll. If the maximum additional sewer credit of \$58,250 were used, then the total subject to forgiveness would be \$275,250.

To the extent that the entire \$58,250 additional credit is not "used" by Buyer during the term of

this agreement then, at the time that another enterprise other than Buyer which is located on Parcel A or B wishes to connect to the sewer, the Buyer shall have the option of assigning part or all of such unused credit to such new enterprise to reduce or eliminate its sewer connection fees.

- E. Upon completion and acceptance of the improvements described in this agreement, City shall provide Buyer a breakdown of actual construction costs including or showing the ten percent (10%) for engineering, which shall become the basis of repayment under the terms of this agreement, subject to the 115% limitation on each item as shown above in Paragraph 5. Sewer connection fees shall be calculated at the time of the termination of this agreement.
- F. Should there occur any legal challenge to City's action in forgiving the costs of public improvements on Parcel B, described above in Paragraph 7(B), Buyer agrees at its sole expense to either:
1. Defend said action at its own cost on behalf of the City and to save, indemnify and hold harmless City for all liability and costs (including reasonable attorney's fees) should such challenge or action succeed; OR
 2. Deem the cost of improvements to Parcel B to be a loan from City to Buyer. Should Buyer choose this option, repayment shall occur in five (5) equal yearly installments. The first installment shall be due and payable on the first anniversary date of Buyer's election to deem the amount a loan, with subsequent installments due thereafter. If Buyer chooses this option, it shall be irrevocable.

In the event of such legal challenge, Buyer must commence defense of the City in a timely manner and before any default is entered. If during such defense Buyer determines that it would prefer to deem the Parcel B improvement amounts a loan, under 7(F)(2) above, then Buyer must pay all costs of defense through termination of the suit against the City, plus any costs of settlement. In short, Buyer can use either option (1) or (2) or (1) then (2).

- G. The improvement costs for Parcel B addressed by this agreement may not represent all of the City's charges in connection with the development of Parcel B. There may be impact or other

charges in connection with such development.

H. Should the City subsequently be reimbursed for any of the costs of improvements discussed in paragraph 7 by the owners of property other than Parcels A & B under such vehicles as Areas Of Benefit or special assessment districts, all such revenues recovered shall belong exclusively to the City.

8. This agreement shall be recorded with the San Joaquin County Recorder's Office and shall run with the land. This obligation is not personal to Buyer hereunder, but shall be applicable to the owner of such land, including Buyer's heirs, successors and assigns.

The rights and duties of the parties hereunder shall inure to the benefit of and shall bind each party's successors and assigns, and further that such agreement shall constitute a lien on the property subordinate only to the first mortgage thereon.

Buyer's right to sell part or all of Parcel B is limited as provided for in paragraph 10.

After the effective date of this agreement, Buyer agrees not to sell Parcel A nor encumber Parcel A with any lien superior to the City's lien without the advance written consent of the City. The City's consent shall not be withheld if (i) the encumbrances on Parcel A which will be superior to the City's unpaid lien on Parcel A after the sale or refinance will be equal to or less than the encumbrances superior to the unpaid amount of the City's lien on Parcel A prior to the sale or refinance, or (ii) the equity in Parcel A after the sale or refinance over and above the encumbrances on Parcel A which will be senior to the City's lien will be 150% or more of the remaining unpaid amount of the lien, whichever of (i) or (ii) is less. The City shall be entitled to retain its own appraiser at its own expense in the event that the City has any concerns about the accuracy of the Buyer's appraisal.

A transfer without approval from City shall be deemed a material breach of this agreement and shall result in all remaining sums becoming immediately due and payable, provided that the City shall grant or deny approval within sixty days of submission to it of a current appraisal of the property plus the details of the proposed sale or refinance. If the City fails to expressly in writing approve or deny the Buyer's request within that 60 day time period, the sale or refinance will be automatically deemed approved. If

the City denies the request, Buyer may petition the court to require the City's approval if the denial was not justified by the provisions of this agreement. If the court agrees that the City was not justified in its denial, then that decision of the Court shall entitle the Buyer to sell or refinance the property on the terms (or better terms) approved by the Court and the wrongful denial will be a breach of this agreement by the City.

In connection with any approved or authorized sale or refinance of Parcel A, the City will cooperate with the Buyer and with any proposed new owner to release the City's lien on Parcel A through escrow and re-establish such lien through escrow provided that (i) the total encumbrances and liens on Parcel A senior to the City's lien after the close of escrow will be equal to or less than the total encumbrances senior to the City's lien prior to the close of escrow, or (ii) the equity in Parcel A after close of escrow over and above liens and encumbrances which will be senior to the City's unpaid lien amount will be 150% or more of the City's unpaid lien amount, whichever of (i) or (ii) is less.

By way of example, assume that the City's lien amount at the time of a proposed sale or refinance of Parcel A is \$200,000 and the total of all encumbrances senior to the City's lien is then \$1.5 million dollars. If the new encumbrances which will be senior to the City's lien after the sale or refinance would be \$1.5 million dollars or less, then the sale or refinance would be approved, or if the equity in the land (appraised value less encumbrances senior to the City's lien) after the sale or refinance would be at least \$300,000, then the sale or refinance would be approved.

At such time as all sums owing to the City under this agreement have either been paid or forgiven, then Buyer can freely sell and/or encumber the property.

9. Prior to close of escrow, Buyer shall provide to City true copies of all sales contracts, mortgage agreements, and appraisals on the subject property. Should the total amount financed by a first mortgage, when added to the amount in Paragraph 7(A) and (B) above, equal more than ninety-five percent (95%) of the appraised value of the property, City may, in its sole discretion, withdraw from this agreement without penalty.
10. It is agreed that Buyer, in its sole discretion, may at any time subdivide the Parcel A or Parcel B provided that all other necessary approvals required for

such subdivision are obtained. The Buyer has discussed a subdivision of Parcel B with the City and the City agrees that it act in good faith to cooperate the Buyer in connection with this subdivision provided that the Buyer understands that the City cannot guarantee the approval of the subdivision.

In the event that a subdivision of Parcel B is approved and the Buyer sells part or all of Parcel B, the City's lien under this agreement, including any lien under 7(F) shall not apply to any portion of Parcel B which is sold but shall be automatically released from any such portion of Parcel B which is sold and the City's lien shall then only apply to the remaining portion of Parcel B still owned by Buyer and also the lien will continue to apply to all of Parcel A until paid or forgiven.

The foregoing notwithstanding, Buyer may not sell any portion of Parcel B (or all of Parcel B) unless the portions of Parcel B still owned by Buyer (if any) plus all of Parcel A (which Parcel A shall remain subject to the City's lien) still shall appraise with an aggregate value at least equal to or greater than any remaining amounts then due to the City under this agreement plus the unpaid balance of any encumbrances senior to the City's unpaid lien amount.

Nothing herein shall be deemed a waiver by City of Buyers need to obtain other approvals, maps or permits necessitated by a subdivision application. Further, nothing herein shall relieve the Buyer, or its successors in interest to Parcel A of the obligation under Paragraph 7(F) above to defend City or declare the improvement costs on Parcel B a loan. Should the ownership of Parcel B and Parcel A be severed, such obligation shall remain as a lien against Parcel A and shall run with the land.

11. Buyer agrees to exercise its best efforts consistent with prudent business practice to reduce water consumption by recycling cooling water and/or recycling wash water to the maximum extent practical from a business standpoint and consistent with a reasonable business cost/benefit analysis and based on sound financial practices and generally available technology.
12. In the event of any dispute over this agreement the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party in addition to any damages or other relief. Either party may request mediation of any dispute hereunder. Unless there are time constraints which would make mediation detrimental, the parties will cooperate in

good faith in an attempt to mediate the dispute with the costs of the mediator being equally divided by the parties. In the event that the mediator fails to timely bring the parties to a voluntary settlement of the dispute, then either party may proceed to litigate the matter.

13. This agreement constitutes the entire understanding between the parties hereto. No oral modifications shall be made. Both parties acknowledge that no other representations, obligations or promises have been made in connection herewith.

14. Any notices required under this agreement shall be addressed as follows:

CITY: City Clerk
P.O. Box 3006
Lodi, California 95241-1910

BUYER: Mark Frater, President
R.E. Service Company, Inc.
1150 Elko Drive
Sunnyvale, California 94089

IN WITNESS WHEREOF, the parties hereto have set their hands this _____ day of _____ 1994.

CITY OF LODI, a municipal corporation

R.E. SERVICE COMPANY, INC.

THOMAS A. PETERSON
City Manager

By: _____
MARK FRATER
President

ATTEST:

APPROVED AS TO FORM:

JENNIFER M. PERRIN
City Clerk

BOB McNATT
City Attorney